

Korean labor law: Granting Annual Leave

Bongsoo Jung, Labor Attorney at KangNam Labor Law Firm

I. Introduction

The ‘annual paid leave’ in the current Labor Standards Act refers to paid vacations that employees receive in return for their work. It was originally designed to provide physical and spiritual rest to employees tired from hard work, to maintain the continuity of the labor force, and to secure a balance in people’s lives. However, Human Resources (HR) managers are often confused about how to best allow for annual leave and continually ask questions on this subject. According to the Labor Standards Act (LSA), annual leave is to be calculated and provided based on the individual employee’s start date. However, for companies with many employees, individual management of annual leave is not easy to calculate due to the different starting dates, and it is also not easy to take advantage of related laws promoting the use of annual paid leave.

Although the rules of employment and collective agreements may stipulate that annual leave will follow the LSA, many companies, for the sake of convenient labor management, provide uniformity in annual leave for employees based upon a ‘calendar year’ period, and then recalculate the annual leave based upon individual start dates at the time when employment is ended. The number of annual leave days can differ in accordance to the various annual leave-provision methods, and individual companies follow different types depending on their HR policy.¹

In this issue, I would like to review, in detail, the various ways in which annual leave can be calculated:

II. Legal Bases for Calculating Annual Leave

1. The Labor Standards Act – Start date

Article 60 of the LSA stipulates that annual leave shall be calculated on the basis of the start date of each individual employee.

Article 60 (Annual Paid Leave)

(1) An employer shall grant 15 days' paid leave to a worker who has registered not less than 80 percent of scheduled attendance in a one year period.

(2) An employer shall provide one day's paid leave per month to a worker whose consecutive service period is shorter than one year or whose attendance is less than 80 percent, if the worker has worked without absence for a full month.

(3) <deleted on November 28, 2017> - This is valid in six months after this deletion.

(4) After the first year of service, an employer shall provide one day's paid leave for each

¹ Bongsoo Jung, 「The Korean Labor Law Bible」 5th edition, June 17, 2016, page 168.

two years of consecutive service in addition to the leave prescribed in paragraph (1) to a worker who has worked consecutively for 3 years or more. In this case, the total number of leave days including the additional leave shall not exceed 25.

2. Government Guidelines – Calendar year

Government guidelines allow for the management of annual leave based on a calendar year, with the detailed method as follows²:

The period for calculation of the attendance rate in order to provide for annual paid leave under Article 60 of the Labor Standards Act shall follow the individual employee's annual service period in principle, but for the sake of efficient labor management, the calculation period may follow a calendar year period (Jan 1 ~ Dec 31) according to the rules of employment and the collective agreement where applicable. In order not to be disadvantageous to new employees when applying a calendar year-based calculation of annual leave, it is required that in the following year the paid leave be calculated in proportion to the start date of the first year for those who have worked for less than one year, after which the company can then provide annual leave on the calendar year basis. Provided, if the total number of annual leave days calculated based upon the calendar year is less than the number of annual leave days calculated by the actual start date, the company shall provide the lesser number of additional annual leave days.

3. Rules of Employment or Collective Agreement (sample): Start Date or Calendar year

The provision of annual leave stipulated in the rules of employment is usually provided as follows:

(1) Where annual leave is calculated by the individual employee's start date

Article 00 (Annual Paid Leave)

- (1) Each employee shall be granted 15 days for a minimum of 80% attendance during the previous one (1) full year;
- (2) With respect to an employee who has worked for less than one year or an employee who has an attendance rate of less than 80% in one year, the company shall allow one day of paid leave for perfect attendance for one month; and
- (3) Each employee who has been employed for 3 years or longer shall be allowed one additional day for every two years exceeding the first one year of continuous employment in addition to the days of leave mentioned in Item a. above. However, the total paid leave including the additional days shall not be more than 25 days.

(2) Where annual leave is managed on a calendar year basis

Rules of Employment: Article 00 Annual Leave

Note - Subparagraphs (1), (2), and (3), have the same content as the above ROE.

- (4) The calculation period for annual paid leave shall start January 1 of each year and finish

² Labor Ministry Guideline: Labor Improvement Team-5352, issued on Dec. 19, 2011

on December 31 of that same year.

(5) As for an employee who started work in the middle of year, the company shall allow on January 1 of the next year, the number of annual leave days calculated in proportion to the employment period of the first year, and beginning the following year, annual leave will be adjusted and provided on a calendar year basis.

(6) At the end of employment, if the number of annual leave days calculated on the calendar year basis is less or more than the number of annual leave days calculated by the individual's start date, the company will provide the annual paid leave allowance for the correct number of annual leave days recalculated based upon his/her joining date.

(3) Where annual leave is managed on a calendar year basis

Rules of Employment: Article XX (Annual Leave)

Note - Subparagraphs (1), (2), and (3), have the same content as the above ROE.

(4) The calculation period for annual paid leave shall start January 1st of each year and finish on December 31st of that same year.

(5) As for an employee who started work in the middle of year, the company shall provide one monthly paid leave each month until the first day of the following year in addition to monthly leave days of the above paragraph (2). On January 1st of the next year, the company provides 15 days of annual paid leave in advance.

(6) At the end of the term of employment (or when resigning), the number of annual leave days that occurs on January 1st of the year in which the employee resigns will be adjusted and settled in proportion to the date of resignation for the period from January 1 to the resigning date.

III. Methods for Calculating Annual Leave

1. Methods Available (Employees joining before June 2017)

The details of granting annual leave, as stipulated in the Labor Standards Act or the Rules of Employment, are generally similar, but the actual calculation for that leave varies greatly by company. Four types are shown: A, B, and C, and a company may use one of them.

※ Annual Leave for a Period of 5 Years and 10 Months, from May 15, 2013 to March 31, 2019

Type A: Based on Employee's Start Date	Type B: Start Date + Calendar year-based	Type C: Prior Payment + <u>Prorated</u>
5-15-2013 started	5-15-2013 started	5-15-2013 started
5-15-2014→15 days	1-01-2009 → 10 days (prorated based on start date)	(7 days granted as monthly leave in advance)
5-15-2015→15 days	1-01-2014 → 15 days	1-01-2014 → 15 days
5-15-2016→16 days	1-01-2015 → 15 days	1-01-2015 → 15 days
5-15-2017→16 days	1-01-2016 → 16 days	1-01-2016 → 16 days
5-15-2018→17 days	1-01-2017 → 16 days	1-01-2017 → 16 days
3-31-2019→resigned	1-01-2018 → 17 days	1-01-2018 → 17 days

	3-31-2018 → resigned (10 days deducted -adjusted according to start date)	1-01-2019 → 17 days 3-31-2014 → resigned (17 days x 3/12 = 13 days adjusted according to finish date)
79 days	79 days (10 days deducted)	90 days (11 more days paid more)

※Annual Leave for a Period of 6 Years and 5 Months, from May 15, 2013 to October 31, 2019

Type A: Based on Employee's Start Date	Type B: Start Date + Calendar year-based	Type C: Prior Payment + Prorated
5-15-2013 started 5-15-2014→15 days 5-15-2015→15 days 5-15-2016→16 days 5-15-2017→16 days 5-15-2018→17 days 5-15-2019→17 days 10-31-2019 → resigned	5-15-2013 started 1-01-2014 → 10 days (prorated based on start date) 1-01-2015 → 15 days 1-01-2016 → 15 days 1-01-2017 → 16 days 1-01-2018 → 16 days 1-01-2019 → 17 days 10-31-2019 → resigned (7 days added - adjusted according to start date)	5-15-2013 started (7 days granted as monthly leave in advance) 1-01-2014 → 15 days 1-01-2015 → 15 days 1-01-2016 → 16 days 1-01-2017 → 16 days 1-01-2018 → 17 days 1-01-2019→ 17 days 10-31-2014 → resigned (3 days deducted -prorated according to resigned date)
96 days	96 days (7 more days allowed)	100 days (4 more days allowed)

2. Methods Available (Employees joining after June 2017)

Since the guaranteed paid leave for employees working less than two years is insufficient (15 days granted for the entire two-year period), Article 60 paragraph (3) of the Labor Standards Act was deleted in an amendment of the LSA to provide additional paid leave days. It now guarantees 11 annual paid leave days for the first year for employees working for less than two years. Thus, a total of 26 paid days are granted over that two-year period: 11 days in the first year and 15 days in the second. Therefore, in calculation of annual leave by fiscal year, an additional 11 days shall be added, to maintain the annual management system.

※Annual Leave for a Period of 2 Years and 10 Months, from June 1, 2017 to March 31, 2020

Type A: Based on Employee's Start Date	Type B: Start Date + Calendar year-based	Type C: Prior Payment + <u>Prorated</u>
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6-01-2017 started 6-01-2018 → Monthly Leave 11 days 6-01-2018 → 15 days 6-01-2019 → 15 days 6-01-2020 → resigned	6-01-2017 started 6-01-2019 → Monthly Leave 11 days 1-01-2018 → 9 days (prorated based on start date) 1-01-2019 → 15 days 1-01-2020 → 15 days 3-31-2020 → -8 days deducted (recalculated based on starting date)	6-01-2017 started → 7 days (Granting 7 days monthly leave ahead) 6-01-2019 → Monthly Leave 11 days 1-01-2018 → 15 days 1-01-2019 → 15 days 1-01-2020 → 16 days 3-31-2020 → 13 days (=16*3/12 → prorated as of resigned on day
41 days	41 days(8 days deducted)	52 days (extra 11 days)

※ Annual Leave for a Period of 3 Years and 5 Months, from June 1, 2017 to October 31, 2020

Type A: Based on Employee's Start Date	Type B: Start Date + Calendar year-based	Type C: Prior Payment + <u>Prorated</u>
6-01-2017 started 6-01-2018 → Monthly Leave 11 days 6-01-2018 → 15 days 6-01-2019 → 15 days 6-01-2020 → 16 days 10-31-2020 → resigned	6-01-2017 started 6-01-2018 → Monthly Leave 11 days 1-01-2018 → 9 days (prorated based on start date) 1-01-2019 → 15 days 1-01-2020 → 15 days 10-31-2020 → +7 days (recalculated based on starting date: paid for allowance equivalent to 7 days additionally)	6-01-2017 started → 7 days (Granting 7 days monthly leave ahead) 6-01-2018 → Monthly Leave 11 days 2018-01-01 → 15 개 2019-01-01 → 15 개 2020-01-01 → 16 개 2020-10-31 → 13 개 (=16*10/12 → prorated as of resigned on day
57 days	57 days (7 days added)	61 days (extra 4 days)

3. Advantages & Disadvantages for each Method of Calculating Annual Leave

(1) Type A- (based on employee's start date):

The advantage of this method is that annual leave can be accurately calculated in accordance with the Labor Standards Act.

However, the disadvantage is that: 1) this method requires a lot of time and effort to manage the annual leave for all employees as the company needs to calculate each individual employee's annual leave separately; 2) it would be difficult to take measures to promote the use of collective annual leave; and 3), an employee who intends to leave may try to find the best time for resignation to maximize their annual leave days.

(2) Type B - (start date + calendar year-based): This method is a way of providing annual leave based on calculating 15 days in proportion to the working period of the first year, on January 1 of the following year, and then to deem January 1 of the following year as the start

date for calculating annual leave for that year. When employment comes to an end, the number of annual leave days calculated based on the calendar year shall be compared with the number of annual leave days calculated based on the start date. If the number of annual leave days based on the calendar year is more than the number calculated by the start-date, it would be preferable to stipulate such a reduction of annual leave in the rules of employment.

The advantage of Type B is that a company can easily manage annual leave, effectively use the method to promote the collective use of annual leave, and be able to calculate annual leave very accurately while still adhering to the Labor Standards Act.

The disadvantage of Type B is that the company needs more time to re-calculate individual annual leave. As well, the employee may try to select a finishing date which allows for more annual leave days.

(3) Type C - (prior payment + prorated): This method provides monthly leave for each attendance month for the first year of employment, and then allows 15 days of annual leave in advance on January 1 of the following year, which is then continuously granted in advance based upon the calendar year. For the month when employment is ended, the annual leave will be adjusted up to the last working day on a prorated basis.

The advantage of Type C is that: 1) the company can effectively use the measure to promote the use of collective annual leave; 2) the company can adjust annual leave easily as it is calculated on a prorated basis; 3) the method can be seen as beneficial in that the employees receive their annual leave ahead of its actual occurrence; and 4) that an employee will not derive any preference for a finishing date because the annual leave is based upon the actual service period calculated on a prorated basis.

Type C's disadvantage is that the company will always grant more annual leave than what would be provided by the start-date based calculation.

4. Review of the Annual Leave Calculation Methods

Companies generally use Type B or C, which are all calendar year-based, when managing their annual leave. Type B (start date + calendar year) takes a recalculation procedure by matching annual leave calculated according to a calendar year with annual leave based on the employee's start date. Type C (calendar year-based) is a method whereby the company provides more annual leave, calculated by a calendar year-based adjustment, and will also additionally compensate for the lower number of annual leave days based on the calendar year. However, this type will also give employees reason to look for the most suitable termination date, so the company may end up providing more annual leave days than intended.

Accordingly, in my opinion, the most suitable is Type C (prior payment + prorated). This type provides monthly leave for each attendance month for the first year of employment,

then allows for 15 days of advance annual leave the following year, and in the month when employment is ended, allows for an adjusted annual leave prorated according to the last working day. In particular, Type C can be the most desirable method because it takes full advantage of the convenient calculation of annual leave as well as the benefits of calendar year-based management.

IV. Conclusion

Annual leave is designed to provide an opportunity for exhausted employees to recharge through the provision of a paid vacation; this should not be considered as an expense, but rather as an investment in securing a constant workforce. Employers should also consider some basic principles when applying a method for calculating annual leave. Firstly, the employee should be able to understand and anticipate his or her annual leave and the available number of days that can be used in the near future. Secondly, the company should provide for collective annual leave so it can easily manage the annual leave for all employees and also promote the use of annual leave. Thirdly, when employment is terminated, the company can easily calculate the annual leave and the employee has no reason to consider the date of termination in the expectation of more annual leave. That is to say, the final annual leave can be easily adjusted based upon the termination date.